

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation)
Against:)**

SCOTT DUANE MELLUM, M.D.)

Case No. 800-2015-018752

**Physician's and Surgeon's)
Certificate No. G81272)**

**Respondent)
_____)**

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on September 12, 2019.

IT IS SO ORDERED August 13, 2019.

MEDICAL BOARD OF CALIFORNIA

**By: Kristina Lawson
Kristina Lawson, JD, Chair
Panel B**

1 XAVIER BECERRA
Attorney General of California
2 STEVEN D. MUNI
Supervising Deputy Attorney General
3 MEGAN R. O'CARROLL
Deputy Attorney General
4 State Bar No. 215479
1300 I Street, Suite 125
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7 *Attorneys for Complainant*

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10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

15 **SCOTT DUANE MELLUM, M.D.**
16 **101 W 2ND AVENUE**
17 **CHICO, CA 95926**

18 **Physician's and Surgeon's Certificate No. G**
19 **81272**

20 **Respondent.**

Case No. 800-2015-018752

OAH No. 2018050625

21 **STIPULATED SETTLEMENT AND**
22 **DISCIPLINARY ORDER**

23 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
24 entitled proceedings that the following matters are true:

25 **PARTIES**

26 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
27 of California (Board). She brought this action solely in her official capacity and is represented in
28 this matter by Xavier Becerra, Attorney General of the State of California, by Megan R.
O'Carroll, Deputy Attorney General.

2. Respondent Scott Duane Mellum, M.D. (Respondent) is represented in this proceeding by attorney D. Marc Lyde, of Leonard & Lyde, 1600 Humboldt Road Suite 1, Chico, California 95928.

3. On or about May 24, 1995, the Board issued Physician's and Surgeon's Certificate No. G 81272 to Scott Duane Mellum, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2015-018752, and will expire on March 31, 2019, unless renewed.

JURISDICTION

4. Accusation No. 800-2015-018752 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 2, 2018. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2015-018752 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2015-018752. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 CULPABILITY

2 9. Respondent understands and agrees that the charges and allegations in Accusation
3 No. 800-2015-018752, if proven at a hearing, constitute cause for imposing discipline upon his
4 Physician's and Surgeon's Certificate.

5 10. For the purpose of resolving the Accusation without the expense and uncertainty of
6 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
7 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest
8 those charges.

9 11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
10 discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the
11 Disciplinary Order below.

12 RESERVATION

13 12. This stipulated settlement and the admissions made by Respondent herein are only for
14 the purposes of this proceeding, or any other proceedings in which the Medical Board of
15 California or other professional licensing agency is involved, and shall not be admissible in any
16 other criminal or civil proceeding.

17 CONTINGENCY

18 13. This stipulation shall be subject to approval by the Medical Board of California.
19 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
20 Board of California may communicate directly with the Board regarding this stipulation and
21 settlement, without notice to or participation by Respondent or his counsel. By signing the
22 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
23 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
24 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
25 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
26 action between the parties, and the Board shall not be disqualified from further action by having
27 considered this matter.

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1 14. The parties understand and agree that Portable Document Format (PDF) and facsimile
2 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
3 signatures thereto, shall have the same force and effect as the originals.

4 15. In consideration of the foregoing admissions and stipulations, the parties agree that
5 the Board may, without further notice or formal proceeding, issue and enter the following
6 Disciplinary Order:

7 **DISCIPLINARY ORDER**

8 **A. PUBLIC REPRIMAND**

9 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 81272 issued
10 to Respondent Scott Duane Mellum, M.D., shall be and is hereby publicly reprimanded pursuant
11 to California Business and Professions Code, section 2227, subdivision (a)(4). This public
12 reprimand, which is issued in connection with Respondent's care and treatment of a confidential
13 patient, is based on the facts and allegations as set forth in Accusation No. 800-2015-018752.

14 **B. EDUCATION COURSE**

15 Within 60 calendar days of the effective date of this Decision, Respondent shall submit to
16 the Board or its designee for its prior approval educational program(s) or course(s) which shall
17 not be less than 20 hours. The educational program(s) or course(s) shall be Category 1 certified,
18 and shall cover medical topics including management of cholestasis of pregnancy and operative
19 vaginal delivery techniques. The educational program(s) or course(s) shall be at Respondent's
20 expense and shall be in addition to the Continuing Medical Education (CME) requirements for
21 renewal of licensure. Respondent shall provide proof of attendance to the Board or its designee
22 of satisfaction of this requirement.

23 Failure to successfully complete and provide proof of attendance to the Board or its
24 designee of the educational program(s) or course(s) within 12 months of the effective date of this
25 Decision, unless the Board or its designee agrees in writing to an extension of that time, shall
26 constitute general unprofessional conduct and may serve as the grounds for further disciplinary
27 action.

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Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course. Failure to provide proof of successful completion of the course to the Board or its designee within twelve (12) months of the effective date of this Decision, unless the Board or its designee agrees in writing to an extension of that time, shall constitute general unprofessional conduct and may serve as the grounds for further disciplinary action.

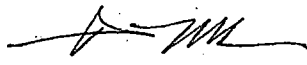
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1 I have read and fully discussed with Respondent Scott Duane Mellum, M.D. the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
3 I approve its form and content.

4 DATED: 03-11-19


D. Marc Lyde, Esq.
Attorney for Respondent

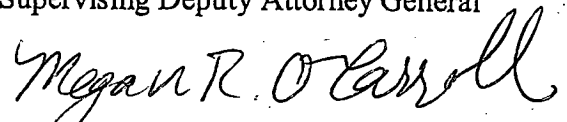
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8 ENDORSEMENT

9 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
10 submitted for consideration by the Medical Board of California.

11 Dated: March 11, 2019

Respectfully submitted,

12 XAVIER BECERRA
13 Attorney General of California
14 STEVEN D. MUNI
Supervising Deputy Attorney General

15 
16 MEGAN R. O'CARROLL
17 Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2015-018752

1 XAVIER BECERRA
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2 ALEXANDRA M. ALVAREZ
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8 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO MAY 2 2018
BY ANALYST

10 BEFORE THE
11 MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
12 STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 800-2015-018752

14 Scott Duane Mellum, M.D.
101 W 2ND AVENUE
15 CHICO, CA 95926

ACCUSATION

16 Physician's and Surgeon's Certificate
17 No. G 81272,

18 Respondent.

19
20 Complainant alleges:

21 PARTIES

22 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
23 capacity as the Executive Director of the Medical Board of California, Department of Consumer
24 Affairs (Board).

25 2. On or about May 24, 1995, the Medical Board issued Physician's and Surgeon's
26 Certificate No. G 81272 to Scott Duane Mellum, M.D. (Respondent). The Physician's and
27 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein
28 and will expire on March 31, 2019, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

1 “(f) Any action or conduct which would have warranted the denial of a certificate.

2 “(g) The practice of medicine from this state into another state or country without meeting
3 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
4 apply to this subdivision. This subdivision shall become operative upon the implementation of the
5 proposed registration program described in Section 2052.5.

6 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
7 participate in an interview by the board. This subdivision shall only apply to a certificate holder
8 who is the subject of an investigation by the board.”

9 6. Section 2266 of the Code states: “The failure of a physician and surgeon to maintain
10 adequate and accurate records relating to the provision of services to their patients constitutes
11 unprofessional conduct.”

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Gross Negligence)**

14 7. Respondent Scott Duane Mellum, M.D. is subject to disciplinary action under section
15 2234, subdivision (b), of the Code, in that he was grossly negligent in his care and treatment of a
16 patient. The circumstances are as follows:

17 8. On or about May 22, 2015, Confidential Patient (C.P.) presented to Enloe Medical
18 Center complaining of upper right quadrant pain. C.P. was a twenty-four-year-old woman
19 expecting her first child, and was at 33 weeks, six days of gestation. After being admitted, she
20 was treated by Respondent and Dr. V. She was found to have elevated liver enzymes and was
21 diagnosed with cholestasis of pregnancy, and was prescribed Cholestyramine at 4 mg per day. On
22 or about May 28, 2015, when she was at 35 weeks and five days of gestation, C.P. transferred her
23 medical care to Dr. V. C.P. had twice weekly fetal non-stress tests, one weekly amniotic fluid
24 index testing, and continued on Cholestyramine.¹

25
26 ¹ Non-stress tests and indexing of amniotic fluid are prenatal tests to determine the status
27 of a fetus during pregnancy. Non-stress testing measures the fetal heart rate to ensure it is within
28 the normal range, and amniotic fluid indexing measures how much amniotic fluid is present to
ensure it is in the appropriate range for the length of gestation.

1 9. On or about June 18, 2015, at approximately 12:30 p.m., C.P. was at 5 centimeters
2 dilation and was having a non-stress test when her water broke, with meconium present in the
3 amniotic fluid.² Respondent was the on-call obstetrician at that time, and was located at his
4 medical office across the street from the hospital. C.P. was admitted in labor. Her current
5 medications included Cholestyramine, Atarax, and Synthroid. Upon C.P.'s admission,
6 Respondent documented her as having possible cholestasis, but did not document a treatment plan
7 for this condition or note any testing to confirm or exclude the possible diagnosis.

8 10. During her admission, C.P. was attached to electronic fetal monitors to measure the
9 fetal heartbeat and uterine contractions.³ Variations in the fetal heartrate are categorized into
10 three groups. Category one tracings are deemed to be normal heartrate patterns that are not
11 associated with lack of oxygen to the fetus. Category three tracings are abnormal heartrate
12 patterns that are associated with lack of oxygen and abnormal blood gas levels. Category two
13 tracings are indeterminate in that they contain elements of both normal and abnormal heartrate
14 patterns, making it difficult to know whether or not the fetus is actually in distress. At
15 approximately 1:00 p.m., nursing staff called Respondent to report decelerations in the fetal
16 heartbeat. Labor progressed normally with a Category two heartrate tracings with variable
17 decelerations. At approximately 2:45 p.m., C.P. was fitted with a fetal scalp electrode to monitor
18 the fetal heartrate internally.

19 11. At approximately 3:25, when C.P. was dilated to eight centimeters, the fetal heartrate
20 decelerated to 90 beats per minute, and remained there for five minutes. Respondent ordered an
21 amniofusion. The fetal heartrate baseline dropped to 120 to 110 beats per minute, as the
22 decelerations became deeper and of longer duration. By 5:00 p.m., the long-term variability of
23

24
25 ² The presence of meconium indicates that the fetus passed stool in utero, which is
sometimes an indication of fetal distress.

26 ³ Electronic fetal heart rate monitoring during labor and delivery is a method of measuring
27 the fetus's heartrate with special equipment. Doppler equipment is used to measure the heartrate
from outside the mother's body and electrodes can be used to measure the heartrate by placing
28 equipment on the fetus through the cervix. Contractions are measured with an intrauterine
pressure catheter inserted through the vagina into the uterus.

1 the heartrate was diminished. At approximately 6:25 p.m. when her cervix was dilated to nine
2 centimeters, C.P. was given Pitocin to speed up the labor. By 7:10 p.m., C.P. was fully dilated.

3 12. At approximately 7:12 p.m., the fetal heartrate dropped into the 70's range.
4 Respondent was called in. The presentation of the fetus was described as vertex, occiput
5 posterior, indicating that the crown of the head was facing down, with back of the head facing the
6 mother's back. The station of fetus at this time was at 2+.⁴ Respondent directed the nurse to call
7 in anesthesia so he could perform a cesarean section. C.P.'s medical record contains a notation
8 regarding informed consent but does not document a description of alternative treatments or the
9 risks and benefits of the treatments provided.

10 13. Respondent then attempted to assist the delivery physically with medical instruments,
11 a procedure known as an operative vaginal delivery. He used a Mityvac vacuum extractor, in
12 which a plastic cap is applied to the fetus's head with suction to exert traction to pull the fetus out
13 of the birth canal. Respondent attempted to use the Mityvac five times on C.P. Each time the
14 vertex was brought to the pelvic floor but then retracted to the 2+ station. At 7:30 p.m., C.P. was
15 brought to the operating room. C.P. was not catheterized during this time. While waiting for
16 anesthesiologist to arrive in the operating room, Respondent made another attempt to perform an
17 operative vaginal delivery with the Mityvac vacuum extractor, but the Mityvac popped off the
18 fetus's head. Respondent reported that each time he used the Mityvac the fetus returned to the
19 same presentation and position at the 2+ station. There was no pre-operative sponge, needle and
20 instrument count performed during this time.

21 14. At 7:38 p.m., an anesthesiologist arrived and Respondent performed a cesarean
22 section. The time of incision was 7:44 p.m and delivery was at 7:46 p.m. A 6lb 9oz female baby
23 was delivered with a spontaneous cry and APGAR scores of 6/6/6/6. APGAR is a quick, overall
24 assessment of newborn wellbeing of a newborn based on a range of criteria on a scale of one to
25 ten each. Scores below seven indicate that a baby requires medical attention. The baby's cord
26 blood was analyzed and found to have a Ph of 7.29 with a base deficit of 12.3, an indicator that

27 ⁴ Station refers to how far down the baby's head has descended into the mother's pelvis. It
28 is measured from -5 to +5, with -5 being the furthest away from delivery and +5 being crowning.

1 the baby may have suffered loss of oxygen in utero. The baby developed respiratory depression
2 and required intubation. She was eventually diagnosed with a brain injury as a result of oxygen
3 deprivation due to bleeding on the brain that occurred from direct trauma.

4 15. Respondent continued to prescribe Cholestyramine to C.P. postpartum. Due to the
5 lack of a preoperative sponge, needle and instrument count, C.P. had a post-operative x-ray to
6 ensure no items were left in her body. Respondent's operative note did not contain a detailed
7 description of the use of the Mityvac vacuum extractor.

8 16. The standard of care when performing an operative vaginal delivery with a vacuum
9 extractor is to minimize trauma to mother and baby by appropriate patient selection, proper
10 application of the instrument, use of minimal traction, and avoiding torsion. Respondent's
11 decision to use the Mityvac in an uncatheterized patient with a vertex presenting in the occipital
12 posterior position at 2+ station, and to do so six times represents an extreme departure from the
13 standard of care, thus subjecting his license to discipline for gross negligence.

14 SECOND CAUSE FOR DISCIPLINE

15 (Gross Negligence)

16 17. Respondent Scott Duane Mellum, M.D. is subject to disciplinary action under section
17 2234, subdivision (b), of the Code in that he was grossly negligent in his care and treatment of
18 C.P.

19 18. Paragraphs 7 through 16, above are incorporated by reference as if fully set forth here.

20 19. Respondent's delay in performing the cesarean section constituted an extreme
21 departure from the standard of care, thus subjecting his license to discipline for gross negligence.

22 THIRD CAUSE FOR DISCIPLINE

23 (Repeated Negligent Acts)

24 20. Respondent Scott Duane Mellum, M.D. is subject to disciplinary action under section
25 2234, subdivision (c), of the Code in that he was grossly negligent in his care and treatment of
26 C.P.

27 21. Paragraphs 7 through 19, above are incorporated by reference as if fully set forth here.
28

22. Respondent was repeatedly negligent in his care and treatment of Patient C.P. in that each of the following represents a separate departure from the standard of care:

- a. Selection and application of Mityvac to attempt an operative vaginal delivery with C.P.;
- b. Delay in performing a cesarean section on C.P.;
- c. Failure to prepare for an emergent cesarean section upon C.P.'s admission due to her presumptive diagnosis of cholestasis of pregnancy;
- d. Continuation of Cholestyramine postpartum;
- e. Failure to prepare for an emergent cesarean section despite multiple non-reassuring fetal heart rate readings in a prima obstetrical patient with cholestasis at 39 weeks of gestation, who had spontaneous rupture of membranes with meconium; and
- f. Failure to adequately and accurately document the medical record.

FOURTH CAUSE FOR DISCIPLINE

(Inadequate Recordkeeping)

23. Respondent Scott Duane Mellum, M.D. is subject to disciplinary action under section 2266 by failing to maintain adequate and accurate records relating to the provision of services to Patient C.P.

24. Paragraphs 7 through 22, are incorporated by reference as if fully set forth here.

25. As set forth in paragraphs 7 through 22, Respondent failed to maintain adequate and accurate records of his care and treatment of Patient C.P., thus subjecting his license to disciplinary action.

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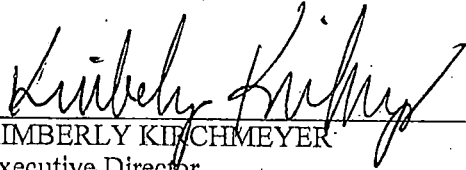
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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Medical Board of California issue a decision:

- 4 1. Revoking or suspending Physician's and Surgeon's Certificate No. G 81272, issued to
5 Scott Duane Mellum, M.D.;
- 6 2. Revoking, suspending or denying approval of Scott Duane Mellum, M.D.'s authority
7 to supervise physician assistants and advanced practice nurses;
- 8 3. Ordering Scott Duane Mellum, M.D., if placed on probation, to pay the Board the
9 costs of probation monitoring; and
- 10 4. Taking such other and further action as deemed necessary and proper.

11
12 DATED: May 2, 2018


13 KIMBERLY KIRCHMEYER
14 Executive Director
15 Medical Board of California
16 Department of Consumer Affairs
17 State of California
18 Complainant

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